

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

HEESHAM BROUSSARD	§	
v.	§	CIVIL ACTION NO. 6:18cv104 (Crim. No. 6:13cr97-5)
UNITED STATES OF AMERICA	§	

MEMORANDUM ORDER OVERRULING MOVANT’S OBJECTIONS  
AND ADOPTING THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

The Movant Heesham Broussard, proceeding *pro se*, filed this motion to vacate or correct his sentence under 28 U.S.C. §2255 challenging the legality of his conviction. This Court referred the matter to the Honorable K. Nicole Mitchell, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this court.

After review of the pleadings and the records of the case, the magistrate judge recommended that the motion to vacate or correct sentence be denied. The court has received and considered the Report and Recommendation of the United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence.

Movant filed objections to the magistrate judge’s Report and Recommendation, but these objections essentially re-state the allegations of the motion to vacate and do not identify any specific finding or recommendation to which objection is made, nor state the basis for such objection.

The court conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes movant’s objections lack merit and should be overruled.

Furthermore, movant is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying §2255 relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law,

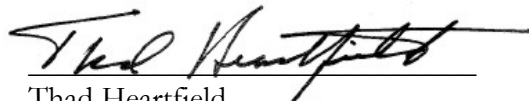
requires the movant to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the movant need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the movant, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

Here, movant has not shown that any of the issues raised by his claims are subject to debate among jurists of reason. In addition, the questions presented are not worthy of encouragement to proceed further. Therefore, movant has failed to make a sufficient showing to merit the issuance of a certificate of appealability.

#### ORDER

Accordingly, movant's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations. A certificate of appealability is **DENIED**. All motions not previously ruled upon are hereby **DENIED**.

**SIGNED** this the 2 day of **April, 2020**.

  
Thad Heartfield  
United States District Judge